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OFFICE OF THE CLERK

**In The Supreme Court of the United States**

**James W. Vogt, Petitioner**

**v.**

**Nancy J. Churchill,**
**Commissioner, Department of Human Resources,**
**Respondents**

**On Petition For Writ of Certiorari**
**To The Maine Supreme Judicial Court**

# SUPPLEMENTAL APPENDIX,

# PETITION FOR A WRIT OF CERTIORARI

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**207-490-9012**

60 pp

# Table of Contents


DIVORCE JUDGMENT 1

Issued 8 months after trial 1

ORDER ON COUNSEL FEES 15

Issued one year after the judgment and only after Judge Field was sued for due process violations. 15

ORDER UPON REFERENCE 28

The court sponsored theft of the marital home which no court nor law enforcement agency in Maine will deal with. Appealed when Attorney was found to have lied about powers of referee. 28

ORDER PENDING DIVORCE 29

Appeal not dealt with at any level because a judge and officer of the Maine Bar Association facilitated the theft. 29

ORDER ON DEFENDANT'S REQUEST FOR INJUNCTIVE RELIEF 31

The "Spicker order" used to protect corrupt judges and lawyers. 31

REFUSAL TO GRANT PERMISSION UNDER THE SPICKLER ORDER 35

One example of how Maine Judges used the spickler order to protect the corrupt among them 35

REFUSAL TO GRANT PERMISSION UNDER THE SPICKLER ORDER 37

Ambiguity of Order 37

Denial of Permission (After fraudulent deed transfer) ..... 37
Letter to Perkins, RE denial ..... 38
Order, Request for Reconsideration ..... 39
Denial of right to appeal – After theft ..... 40

**DENIALS UNDER SPICKLER BY FIELD ..... 41**

**DECISION AND ORDER, SUPERIOR CT ..... 42**

**DECISION – DHS HEARING OFFICER ..... 47**

**DHS APPEAL DENIAL – PERKINS ..... 52**

**ORDER FOR PROTECTION FROM ABUSE ..... 53**

**ORDER ..... 54**

**Aid and abet tampering, pay her $6000 in fees while finding her in contempt ..... 54**

# Divorce Judgment

***Issued 8 months after trial***

Maine District Court

| | |
|---|---|
| STATE OF MAINE | DISTRICT COURT |
| Lincoln, ss. | DISTRICT SIX |
| | DIVISION OF LINCOLN |
| | LOCATION – WISCASSET |
| | DOCKET # WIS-91-DV-123 |
| JAMES W. VOGT | ) |
| PLAINTIFF | ) |
| | ) |
| V | ) DIVORCE JUDGMENT |
| NANCY J. CHURCHILL | ) |
| DEFENDANT | ) |

Notice of the pendency of this action for divorce has been duly and seasonably given according to law. This action was heard before me on October 14th and October 15th, 1992, November 9th, 1992, and January 4th, 1993, at which time the allegations and evidence were fully presented and considered. Plaintiff was present at all hearings, together with Judy Potter, Esq. of Portland his attorney, and the Defendant was present at all hearings represented by Elizabeth J. Scheffee, Esq.and Stephen C. Lunt, Esq. both also of Portland.

Plaintiff's case -in chief consisted of his own testimony and that of Michael Lobeski, Amy Naylor, Emily Blagden, Peter Tambone, Craig Perron, Dr. Brian Rines, and Dr. Kate McLinn. Mr. Vogt introduced fifty-five (55) exhibits, including tax returns, various financial calculations and summaries of his testimony concerning the allocation of property. Defendant's case in chief consisted of her testimony and that of Neil Ames, Nancy Coyne and Mary Gary Kennedy. She introduced twenty-five (25) exhibits,

including tax returns, various calculations, summaries of her testimony on certain points, and photographs of her children.

The court appointed Lynda Doyle as a Guardian Ad Litem for the parties' two minor children, Robin and Zoe, twins barn September 14, 1989. Ms. Doyle testified at the hearing, and her report was admitted into evidence. In addition, by agreement of the parties and in the interest of judicial economy, the Court incorporated into this proceeding the exhibits and testimony from a Protection from Abuse hearing between the parties heard by this Court 30 June 1992, as reflected by the exhibits and judges notes. This hearing had resulted in a finding of abuse, and an Order of Protection issued against Mr. Vogt.

The Court, by agreement of counsel, held the record of this case open until early April 1993 for counsel to submit documents concerning the Nancy Churchill Trust to confirm. title in the marital home. This was done on March 11, 1993. In addition, as requested by the Court, both parties submitted post-trial memoranda. The Court requested Proposed Findings of Fact and Conclusions of Law and a Proposed Judgment. Defendant submitted the requested proposed pleadings: counsel for the Plaintiff failed to comply with that request.

After careful review of all of the testimony and documentary evidence outlined above, the arguments of counsel and their written submissions, the Court hereby ORDERS.AND ADJUDGES to the parties a divorce from the bonds of matrimony for the cause of irreconcilable marital differences.

PARENTAL RIGHTS AND RESPONSIBILITIES

The parties have two minor children, Robin and Zoe, twins born September 14, 1989. One of the two primary

disputes in this case has to do with the allocation of parental rights and responsibilities with respect to these two children.

The parties were married February 15, 1988 in Perth, Australia while on a world tour. Both parties were employed by IBM prior to their departure. On their return to the United States, Ms. Churchill, who has a master's degree in education, was employed by the Portland Public Schools Department and later (and presently) as Town Manager for the Town of Richmond. Mr. Vogt has not been employed outside the home since the marriage. He has earned a small annual income from a computer consulting business which he operates from the home, and he spent a large amount of time in the home assisting the carpenter in it's construction. Just prior to trial, Mr. Vogt found employment in Saco and has subsequently moved to Saco to live.

Throughout the infancy of these two minor children, Mr. Vogt was in the home and primarily responsible for the day-to-day care of at least one of them. Ms. Churchill nursed both twins, however, so she took one child with her each day on an alternating basis. Mr. Vogt also worked extensively on the construction of the house while the children were in their infancy, as well as in a consulting business that he ran out of the home, requiring him frequently to employ both a day-care provider and a cleaning person. There is no question that the Plaintiff loves the children and that this love is reciprocated. In addition, there is no question that he can adequately supervise them.

Despite the Plaintiff's efforts to paint the Defendant as somehow an inadequate mother, the Court finds that she is a loving and careful mother who has a particular ability to assess her children's needs and speak about her children's needs and goals lucidly, intelligently and specifically. There is no question whatsoever that she has been deeply involved in the upbringing of the children, even though she has also worked outside of the home.

The Court heard an inordinate amount of details about the daily lives of these litigants, each detail colored in a different light by respective counsel. It is clear to the Court that each party has good points and bad, and that, on the whole, both are able, caring loving parents who genuinely care for their children, are loved by their children, but who are ~~totally incapable of~~ getting along with each other. This brings us the Court's primary concern in this case.

The primary thrust of the Defendant's case against the Plaintiff was, that while he a good and loving father, his animosity towards his wife is so bitter that he is incapable of allowing and encouraging frequent and continuing contact between the children and the other parent. Title 19, M.R.S.A. Section 752(h). As evidence of this, the Defendant produced the written communications between the two parents while they were engaged in a "bird-nesting" arrangement at the household, wherein the children resided in the family household and parents alternated custodial care at the household. These notes were generally acerbic and did little to enhance the waning good-will between the two parties.

In addition, the Defendant produced evidence concerning formal complaints that the Plaintiff had filed: against her with the New York State Department of Internal Revenue, the Internal Revenue Service, the Maine Department of Human Services, the local Humane Society and her employer; against her therapist to the state licensing agency; his lawyer in Illinois and his former lawyer here, both to the Overseers of the Bar; as well as numerous complaints against the judge who heard the Motion Pending Divorce, which complaints were in the form of letters to individuals, press releases and letters to the editor of the local papers; and even in the open courtroom about her use of the subpoena power to extract testimony concerning confidential meetings of the Board of Selectman of the Town of Richmond.

Plaintiff spent a great deal of time rebutting this point-by-point through his own testimony and the testimony of an expert witness in order to show that these were rational

and appropriate responses to unusual events. Both parties seemed to have made out a colorable case. It is not without reason, however, that our forbears insisted on the right of confrontation and cross-examination a bizarre incident occurred during the direct examination of the Plaintiff by his counsel that crystalized the evidence of this case and cast the personalities of the respective litigants in a clear light. During a lull in the examination,, while his attorney was examining her notes, Plaintiff, with some relish, stuck out his tongue at counsel for the Defendant. The Plaintiff's explanation of this was that "She had been staring at me, and I just had to do it" or words to that effect.

What makes this incident so enlightening is that we are not dealing in this case with an overwrought teenager involved in a spat with his ex-girlfriend, but rather with a mature and intelligent professional man in his late forties who by all rights should be a leader in his community.' That he should stoop to this level of behavior, especially in the very forum in which the future of his parenting relationship is being decided, shows that his animosity towards his wife is so bitter and so deeply ingrained that he is totally incapable of controlling his impulses, and that, at this stage, he is totally incapable of meaningful communication concerning the welfare of his children with his wife. This requires the Court to interpret the various incidents testified to in a light more favorable to the Defendant. Directing our attention to Title 19, M.R.S.A. Section 752(5), it is therefore clear that the Plaintiff does not have the capacity "... to cooperate or to learn to cooperate in child care;" Title 19, . M.R.S.A. 752(5)(1); or the ability to cooperate and resolve disputes, Title 19, M.R.S.A. Section 752(5)(J); and further the Court could infer that he has less capacity to "...allow and encourage frequent and continuing contact between the child and the other parent, including physical access;". While these are not the only factors to be considered, all of the other factors seem to come out in even balance, and these tip the scales in favor of one course of action.

The Court finds that this is substantial evidence that jointly shared parental rights and responsibilities should

not be ordered, and therefore declines to do so. It is therefore ORDERED that sole parental rights and responsibilities be, and hereby are, awarded to the Defendant, with primary residence of the-children to be with said Defendant.

Given that the Plaintiff has moved to the Biddeford/Saco area for both employment and residence, the visitation scheme requested by the parties will not be workable. The court therefore enters the following with regard to visitation: The right is given to Plaintiff to have contact with and by said children at all reasonable times, including, but not limited to, the following: every other weekend from Friday at 6:00 pm until Sunday at 6:00pm; five weeks during summer; New Years Day, Presidents' Day, Memorial Day, Labor Day, Veterans Day and Christmas Day in odd numbered years beginning in 1993; Martin Luther King Day, Patriots' Day, Independence Day, Columbus Day, Thanksgiving Day and the children's' birthday in even numbered years, beginning with 1994. In any event, Mothers' Day and Fathers' Day shall be spent with the parent of that respective gender, and each parent's birthday shall be spent with that parent. If being with the Defendant on Mother's Day, her birthday or the children's birthday disrupts Plaintiff's normally scheduled visitation, then visitation shall be made up on 'the next following weekend. If being with Plaintiff on Father's Day, his birthday or the children's birthday comes at a time when he would not normally be scheduled for visitation, his next regularly scheduled visitation shall be advanced so that the visitation for the special event satisfies the visitation requirement for the next regularly scheduled visitation. Unless otherwise impracticable, holiday visitation shall begin at 6:00 p.m. the preceding day and end at 6:00 p.m. on the holiday. In the event that the children attend school, the visitation schedule outlined above shall include for each holiday the school vacation, if any, that accompanies it. "Christmas Day" shall mean the first half of the Christmas school vacation, with the other party having the children during the other half of the vacation. Plaintiff shall have summer visitation as follows: 5 consecutive weeks in the summer, beginning

the Friday after the end of school in June on every even numbered year beginning in 1994, and ending on the second Friday before the beginning of school In September every even odd year, beginning in 1993. Weekend visitation shall not occur during the periods of vacation visitation.

The parties shall cooperate to ensure reasonable continuity of the children's extra-curricular activities to the maximum extent possible. Time spent at summer camps and activities of that sort shall not be subtracted from the total time of contact with either party, but rather shall be considered the child's own time.

Transportation shall be the responsibility of the party into whose care the child is being delivered. if that party is unable. or unwilling to physically provide the - transportation and the other party provides the transportation, the responsible party shall reimburse the other party for the transportation at the rate of $.28 (twenty eight cents) per mile between the two parties' homes.

Plaintiff shall provide Defendant with at least three day notice of his intention not to exercise weekend visitation, and at least three week notice of his intention no to exercise vacation or summer visitation, which notices shall be communicated to Defendant personally.

It is further ORDERED that both parents shall have access to records and information pertaining to the minor child, including but not limited to medical, dental, and school records. It shall be the obligation of the party seeking the records to obtain them him/herself.

Defendant is presently employed part time by the Town of Richmond, earning $20,000 for twenty of these hours per week directly from the town. She also earns grant money, this year expected to be in the range of $18,000, for an additional sixteen hours per week. Her estimated income this year will.,be $38,400. Plaintiff is presently employed in Saco, earning $36,000. While this was expected to be a job of only short (less than one year)

duration, this is clearly indicative of his earning capacity, and therefore the Court finds that he is capable of earning this amount on a continuing basis.

Pursuant to 19 MRSA Sec 316, the Court has made certain findings of fact concerning the current parental support obligations as computed under the presumptive application of the guidelines. These findings are contained within the completed Child Support Worksheet which is attached hereto and incorporated herein by reference.

The Plaintiff is ORDERED to pay to the Defendant the sum of $168 per week toward the support of the minor children. Payments are to start 13 August 1993. The components of the parental support obligation are as follows:

| | |
|---|---|
| Basic support entitlement | $350.00 |
| Child care expenses | $ 112.00 |
| Extraordinary medical expenses | $0 |

It is ORDERED that the support obligation for the child shall continue until the child attains the age of la, provided, however, that if the child is attending school, then child support continues until the child either graduates or reaches the age of 19, whichever occurs first.

It 'is further ORDERED that the Plaintiff maintain health insurance for the benefit of the minor child, if it is available through employment at a reasonable cost. If he becomes unemployed, he shall notify Defendant immediately, whereupon this requirement transfers to her for the duration of his period of unemployment. If the child is a recipient of public assistance, proof of health insurance is to be provided to the Maine Department of Human Services within 15 days of this Order if Plaintiff/Defendant already has such coverage, otherwise within 15 days of obtaining the coverage or of changing the coverage. It is further ORDERED that all uninsured medical, hospital and other health care expenses of the child shall be paid in the following manner: 48% by the Plaintiff and 52% by the Defendant.

In the event that the child is a recipient of assistance, support pursuant to this order shall be paid directly to the Maine Department of Human Services.

So long as an obligation for child support exists, on or before the first of May of every year the. parties shall exchange either photocopies of their federal tax return or an affidavit concerning their current income. This affidavit shall include the name and address of their employer, the-amount of gross wages and/or salary earned for a typical work week, the amount and source of any additional income, and the amount of gross income received during the preceding tax year.

Any party to this action may request that the Department, of Human Services review the amount of child support herein and take any appropriate action after that review. Upon a showing of a substantial change of circumstances, any party may seek, a ,modification of this Order by filing with the Court a Motion to Modify Child Support.

Any party may appeal this Order by filing a notice of appeal with the Court and, unless the appeal fee is waived Court, paying the appeal fee.

REAL ESTATE -

Defendant purchased the marital home in Dresden in 1988 for approximately $47,000. This purchase money was her non-marital property. The parties then had a house built upon the land by one Neil Ames for $67,000. Plaintiff assisted significantly in the construction of the home. The value of the property is stipulated to be $210,000, with $168,000 in equity.

During the late eighties, Plaintiff was involved in extensive litigation in Illinois with a former spouse about an alimony arrearage and, fearing a lien being placed upon her house, Plaintiff conveyed the property on 12 October 1989 to the Nancy J. Churchill Trust. Defendant's sister was trustee. In April 1990, after the settlement of the litigation in Illinois, Plaintiff began urging Defendant to convey the property to a joint

tenancy. This urging became quite insistent. On 18 April 1991 Defendant finally had the parcel conveyed by the Trustee to herself, and ten days later, after repeated urging by the Plaintiff, she conveyed it from herself to herself and her husband as joint tenants by deed dated 28 April 1991 recorded in During the late eighties, Plaintiff was involved in extensive litigation in Illinois with a former spouse about an alimony arrearage and, fearing a lien being placed upon her house, Plaintiff conveyed the property on 12 October 1989 to the Nancy J. Churchill Trust. Defendant's sister was trustee. In April 1990, after the settlement of the litigation in Illinois, Plaintiff began urging Defendant to convey the property to a joint tenancy. This urging became quite insistent. On 18 April 1991 Defendant finally had the parcel conveyed by the Trustee to herself, and ten days later, after repeated urging by the Plaintiff, she conveyed it from herself to herself and her husband as joint tenants by deed dated 28 April 1991 recorded in the Lincoln County Registry of Deeds in book 1688 at page 146. Very soon thereafter, the couple separated and this litigation commenced.

The threshold question is whether or not there is marital real property to address. After extensive examination of the trust documents, the Court is satisfied that the Trustee had the legal right to convey the parcel to the Defendant and that the children's' interest, if any, were not permanently vested.

Defendant urges the Court to declare the property to be non-marital, with a modest marital component as the result of Plaintiff's efforts and the payment of periodic mortgage payments from the marital estate. She argues this based upon a fraud theory, that the Plaintiff induced her to convey the property when he was fully intending to depart the marriage, solely to increase his marital share. The timing of these events is more than suspicious, and Defendant's position is more likely than not the case, but the standard of proof here for showing that the transfer was not intended as a gift to the marital estate is by clear and convincing evidence. Defendant has not met that higher burden: the property is marital.

Both parties have spent incredible efforts painting their picture of the financial dealing of the parties since the time they first met, dealings which can only be described as labyrinthine at best. Having just emerged from a difficult divorce,. Plaintiff had few assets when they first met, and Defendant was employed, owned a home, and had other assets. They both departed IBM and embarked upon a world tour, getting married in Perth, Australia 15 February 1988. He received a severance payment of approximately $100,000 in August 1988. He worked in his home as a computer consultant and earned approximately $10,000 in 1992. He also spent time building the marital home, received one half of the proceeds of a $42,000 home equity-loan the couple took out to keep themselves afloat during the separation, and borrowed $10,000 on his Mastercard. He also spent over $42,000 on legal fees concerning his various litigation.

At the time that they married, Defendant had just sold a home worth $270,000 (sold just prior to the marriage, netting her $137,.000), in excess of $10,000 in various savings accounts, $6500 in travelers checks, and two IRAs, ultimately combined into one IRA through Massachusetts Mutual. She also had several shares of IBM stock and the tangible personal property itemized in Defendant's exhibits 14 and 16. She soon became involved in litigation with IBM concerning her discharge, from which she netted approximately $10,000 after payment of attorney's fees.

Because this was a short term marriage, the Court, in its decision today, wants to put each party back to the same spot that they found themselves at the time of the marriage. While Defendant spends a great deal of time discussing the money spent by each before the marriage, the Court cannot consider this in its distribution of the marital property, except to the extent that each party contributed non-marital property to the marital enterprise. To this end, and considering not only the respective contributions to the real estate, but the respective contributions to the various retirement plans, the Court allocates $60,000 of the equity in the

marital home to Plaintiff and the balance to the Defendant.

it is therefore ORDERED that the marital home, described in a deed dated 28 April 1991 from Nancy J. Churchill to Nancy J. Churchill and James W. Vogt, recorded in the Lincoln County Registry of Deeds in book 1688 at page 146,.be sold, and the proceeds distributed as follows: after payment of the closing expenses and the equity loan, the Plaintiff shall be paid $60,000, from which shall be subtracted his unpaid portion of the taxes, loan payment, and any child support arrearage existing at the time of the closing. The balance of the proceeds shall go to the Defendant.

The house shall be listed by a local real estate broker doing business in the Dresden area chosen by the parties. If they are unable to decide upon a broker, then they shall each submit to the Court three nominees, and the Court shall decide. The house is to be listed at the asking price determined by that broker, unless the parties, in writing, agree to another price. .,. The house shall be sold to the first ready, willing and able buyer recommended by that broker, unless the two parties in writing agree not to sell to that buyer. Until such time as the house is sold, all of the household expenses, the maintenance, utilities, and the home equity loan shall be paid by the Defendant. Taxes shall be paid by both parties equally.

Personal property is set aside to the party in whose possession the property now rests, who shall be solely responsible for the debt thereon, and who shall hold the other harmless for any damages, including costs and fees for defense, arising from their failure' to satisfy that debt. Each party is awarded the retirement accounts in their own name, and are responsible for the debts in their own name, with the exception of the home equity loan, which was dealt with above.

Counsel for the Defendant shall prepare for the court any qualified domestic relations orders or abstracts necessary to effectuate this judgment.

ATTORNEYS FEES

This case, by all analyses, is not a complex one. While there are two children, they are young, healthy and there are no special problems relating to them other than the basic issue of allocation of parental rights and responsibilities and residence, an issue that is dealt with on a daily basis by courts and lawyers throughout the state. The assets of the marriage are modest, being in greater part the equity in the house, together with two retirement plans, cars and personalty. Taken as a whole, this case shows no reason for requiring special expertise, unusually large amounts of time involvement by counsel or any other unusual expense. While the Court recognizes that animosity exists between the parties, even assuming its worst aspects it does seem to justify expenses too far beyond the normal "'and expected expense of divorce litigation.

After careful examination of the affidavits submitted by counsel, the Court is not prepared to find that counsel fees in this case are reasonable, but rather the opposite3nor is it willing...to accept the usual allocation based upon capacity to pay. In order to award fees in this case, another hearing is required, at which the Court will consider the following: the novelty, complexity and difficulty of the questions involved, the rates charged-"@ by Lincoln County and Portland practitioners of equal experience, reputation and ability of those involved here, and the reasons for any unusual time involvement. Counsel must produce detailed justification for all charges and be prepared to justify them. cf Weinberger et al vs Great Northern Nekoosa Corp. Civil 89-0270-P-C, U.S. District Court for the District of Maine; Fleet Bank vs Joan T. Steeves et al. Civil 91-0076-P-C, U.S. District Court for the District of Maine. This hearing will be held after this case has come completely to rest. In all other respects, this Judgment today is final for purposes of appellate review.

ALIMONY

Neither party is awarded alimony in this case, as each have roughly equal earning power, both parties are employed or are capable of employment, there is no disparate distribution of property, it was a marriage of short duration, and neither party has any unusual future needs.

OTHER ACTIONS

This matter was consolidated for trial with WIS-92 PA-043 and WIS-92-CV-235. The Protection From Abuse Order in the former case is entered in that particular case today. All relief sought in the latter case has been dealt with herein.

RESTRAINING ORDER

It is further ORDERED that each party is restrained and enjoined from vexing, harassing or annoying the other or interfering in any manner, directly or indirectly, with the liberties or independence of the other.

CONDITIONAL ORDER OF INCOME WITHHOLDING

The attached Conditional Order of income Withholding of this same date is incorporated herein by reference and is made a part hereof as though more fully set forth herein.

DOCKET **ENTRY**

The Clerk shall enter the following entry in the docket:

The Divorce Judgment dated 11 August 1993 is incorporated in the docket by reference. This entry is made in accordance with M.R.Civ.P. 79(a) at the specific direction of the Court.

Dated August 11th 1993,
/s#Joseph Field

Joseph H. Field
Judge, Maine District Court

## ORDER ON COUNSEL FEES

***Issued one year after the judgment and only after Judge Field was sued for due process violations.***

| | |
|---|---|
| STATE OF MAINE | DISTRICT COURT |
| Lincoln, ss. | DISTRICT SIX |
| | DIVISION OF LINCOLN |
| | LOCATION – WISCASSET |
| | DOCKET # WIS-91-DV-123 |
| JAMES W. VOGT | ) |
| PLAINTIFF | ) |
| | ) |
| V | ) ORDER ON COUNSEL |
| NANCY J. CHURCHILL | ) FEES |
| DEFENDANT | ) |

This matter came for hearing before the Court in July, 1994 by the Court's own order. Because a Notice of Appeal had been filed by the parties prior to this Court's entering its judgment, the matter of fees in this case was specifically reserved by the Divorce Judgment until such time as the appeal had been decided. Subsequent caselaw from the Maine Supreme Judicial Court, however, has made it clear to this Court that all issues of the case, including fees, must be resolved prior to transmitting the case to the appellate court, so this Court set the matter for pretrial conference and hearing.

There are two generalized issues concerning fees the Court must deal with in this case before issuing its order: The first has to do with the specific distribution of fees between the parties in a protection from abuse case as distinguished from a divorce case itself; and the second

issue has to do with the reasonableness of the fees themselves. The Court will address the second issue first.

Except in limited cases, this Court has no authority to award attorneys fees in the absence of either a statute or specific contractual provision. **Any** portion of an application for attorney's fee not attributable directly to the attorney's efforts litigating the claim based upon the statute which provides for fees should be excluded from the courts award. Beaulieu **v** Dorsey, 562 **A** 2nd 678 (Me.1989). The Beaulieu limitation on court awarded attorneys fees can arguably be extended to preclude an award of fees generated by any type of pre-trial and trial maneuvering which-is not directly related to a claim under a statute providing for fees. In other words, if an attorney engages in unnecessary "fee padding" actions which do not significantly contribute to the successful prosecution of the claim, such actions arguably fall outside the scope of the statutory fee recovery provisions, and therefore should not be included in the courts award. What is true in an Unfair Trade Practices Act case must certainly be true also in a domestic relations case. A New York domestic relations case appears to support this position in Ernest v Ernest 407 N.Y.S. 2nd 294 (NY App. Div. 1978) the Court held that services "unrelated" to a divorce action are not recoverable under a statute providing for an award of attorneys fees in a divorce proceeding. This is consistent with caselaw in other states, such as Guthrie vs Guthrie, 357 So. 2nd 247 (Fla. 1978). The Court has examined the fee affidavits and billing documents in this case and has noted a significant amount of time relating to complaintis that seemingly have nothing to do with the divorce, such as pleadings and correspondence to professional licensing boards, executive agencies and the like. This case has taken on a bizzare and tortuous life of its own, including complaints against almost, if not every person involved in it. These complaints have been filed in federal and state courts, executive agencies, law enforcement agencies, licensing boards, even the Humane Society. Noone has been immune. The Court finds that all of this seemingly irrelevant representation on the part of Defendant's

counsel in fact does arise directly from this divorce, and is a part of it.

There is very little caselaw in this state dealing with the issue of fees. The key factors in analyzing a petition for the payment of fees, however, seem to come from standards originally set forth in Johnson v Georgia Highway Express, Inc. 488 F 2nd 714, 717-19 (5th Cir. 1974). Poussard v Commercial Credit Plan, 749 A 2nd 881 (Me 1984); Weinberger v Great Northern Nekoosa Corp, 925 F 2nd 518 (Ist Cir. 1991). These factors are: 1) the time and labor required; 2) the novelty and difficulty of the questions; 3) the skill required to perform the legal service properly; 4) the preclusion of other employment by the attorney due to the acceptance of the case; 5) the customary fee; 6) whether the fee is fixed or contingent; 7) the time limitations imposed by the client or other circumstances; 8) 'the amount involved and results obtained; 9) the experience, reputation and ability of the attorneys; 10) the desirability of the case; 11) the nature and length of the professional relationship with the client; 12) awards in similar cases. While these factors have come under considerable criticism, Linday Brothers Builders v American Radiator and Standard Sanitary Corp., 540 F. 2nd 102 (3rd Cir. 1976); Stanford Daily, Inc. vs Zurcher, 64 F.R.D. 680 (N.D. Cal. 1974), "Court Awarded Attorneys Fees: What Is'Reasonable'?", 126 U. Pa. L. Rev.- 281 (1977),these factors, at times redundant, are fairly broad ranging and inclusive and will be adopted by the Court as the basis for review, in addition to the statutory standards set forth in 19 **M.R.S.A.** 766(l)(i) and 19 **M.R.S.A.** Sec. 722(3) as interpreted in Most v Most 477 **A** 2nd 2@50 (Me 1984).

The first Johnson factor deals with time and labor required. The Court should conduct what amounts to an independent review of the hours claimed. Johnson v Georgia Highway Express, Inc., supra; Weinberger v Great Northern Nekoosa Corp, supra. Any unnecessary duplication of hours should be subtracted if more than one attorney is involved. Johnson, supra. see also Hensley v Eckerhart, 461 U.S. 424 (1983). The Court

notes that two other attorneys from Defendant's lead counsel were involved in the case, one only minutely, and one being a significant presence at trial. While both of Defendant's counsel are outstanding members of the bar, both of their presence was not required for this trial, so the Court will disallow the hours of all lawyers in the case except Ms. Scheffee. This amounts to a reduction of the divorce case bill by 73.8 hours at $135, or $9963.

Legal and non-legal work should be separated; non legal work commanding a lesser rate. "The dollar value of [such non legal work] is not enhanced just because a lawyer does it" Johnson, supra, at 717. Travel time cannot be justified at the standard rate: all of Defense Counsel's travel time will be allowed at $55 per hour vice her billing rate of $110. While travel time as such is not specifically denoted, the Court estimates that one round trip to Wiscasset from Portland for the protection from abuse case and ten for the motion pending, pretrial conference, hearing, motion to withdraw by the guardian, and three post judgment motions, all at two hours each, require the reduction of the fee award in the protection from abuse case by $55 and the award in the divorce case by $550.

Unnecessary time spent on a case is properly subtracted from a courts award of fees. Johnson., supra, Hensley, supra. The Courts determination of what is necessary and unnecessary should be based on the trial judges "knowledge, experience and expertise of the time required to complete similar activities" Johnson, supra, at 717. Cases in the domestic relations arena indicate that a fee award should not include compensation for time spent on unnecessary research, Davis v Taylor 344 S.E. 2nd 19 (N.C. Ct App-1986), superfluous court appearances, Gasperini v Gasperini 373 N.E. 576 (ill 1978) or questionable strategy sessions, Guthrie v Guthrie, 357 So. 2nd 247 (Fl. 1978). In Davis v Taylor, the Court noted that, particularly in domestic relations litigation, there is a temptation for attorneys to "pad" hours anticipating full compensation by the opposing party. The Court stated that such an expectation "presented great danger that 'billing judgment' would

suffer; there is less incentive to exclude unnecessary or unreasonable hours when the adversary, as opposed to the client, would foot the bill" id, at 26. Another problematic feature of court awarded attorneys fees in domestic relations cases is that domestic relations clients often use more of the litigation process, and therefore the attorneys' time, than is warranted by the factual or legal issues presented in a case. Sharp v Sharp 491 SW 2nd 639 (Ky 1973). An Ohio case catalogs 263 telephone conferences and 37 office conferences between counsel and party. Swanson v Swanson 355 N.E. 2nd 894 (Oh 1976) The court noted that, "although the facts of a case may have made many consultations necessary, there comes a time when counsel is obliged to limit such conference or accept the fact that he cannot always expect full remuneration for the time so consumed." Id at 900 (quoting Dewitt v Dewitt, 191 N.W. 2nd 177 (S.D. 1971)). There is no question that this is a factor in the instant case. Because the Court has decided ultimately to award fees to the Defendant, it is not necessary to analyze Plaintiff's counsel's bills in this regard. The Court finds that the tremendous burden of unnecessary work in this case was created by the Plaintiff. Examination of defense counsel's bill show no work of the sort described in this factor that was not as a direct result of Plaintiff's maneuvering. Reluctantly the Court finds that, in this case, the defense of defendant required this work.

The next factor set forth in Johnson is whether any of the issues presented in a case are difficult or ones of first impression. None of the issues presented in this case are of first impression, nor are they anything other than routine. While this case was unusually highly emotionally charged, the basic facts of the case and the legal issues involved here were quite routine. This factor does not become relevant in analyzing the fees in this case. No legal research time will be allowed.

The next factor set forth in Johnson is the skill required to perform the legal service properly. This factor requires the court to engage in a performance evaluation of the applicants service to his client: "the trial judge should

closely observe the attorneys work product, his preparation and general ability before the court." In determining what constitutes a proper performance of the legal service, " the trial judges expertise gained from past experience of a lawyer and his observation from the bench of lawyers at work become highly important in this consideration." Johnson, supra. Presumably, poor performance is grounds for reducing either the hourly rate or the hours claimed. The aspect of quality which is a component of the reasonable hourly rate of compensation set forth below, however, should not be utilized to augment or diminish the basic award. See Linday Brothers Builders, supra. The Chief Judge for the District of Maine said this best when he cited the phrase" even Michaelangelo does not get Sistine Chapelrates for painting a barn." Weinberger, supra. The lawyers in this case were doing what they usually do. While the Court has a serious disagreement with the' fees in this case, it does not have a disagreement with the way that the lawyers did their trial work. Defense counsel earned her top dollar.

The next factor set forth in Johnson is the factor of the experience, reputation, and ability of the attorneys involved. This factor would appear to overlap the customary fee factor, requiring the court to determine whether the fee requested is in proportion to the applicants skill, experience and reputation. "Longevity per say, however, should not dictate the higher fee. If a young attorney demonstrates skill and ability, she should not be penalized for only recently admitted to the bar." The court in this case finds that these two attorneys are experienced domestic relations trial lawyers, both of whom would command fees in the higher range of fees in the Lincoln County area.

The next factor set forth in Johnson is the customary fee, meaning hourly rate. The fee set forth by the Court should be calculated based upon "the customary fee for similar work in the community". Johnson, supra. Generally, the "customary fee" is the "prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience

and reputation ... the applicant bears the burden of presenting satisfactory evidence that the requested rate is in line with the prevailing market rates." Norman v Housing Authority of the City of Montgomery, 836 F 2nd 1292 (Ilth Cir. 1988). The Court finds that lawyers of equal experience, skill and reputation in the Lincoln County area are paid $125 per hour. As defense counsel has entered into an agreement with her client for a lesser amount, the Court will accept that lower amount.

The next factor set forth in Johnson is the awards for fees in similar cases, meaning the size of the fees in total, as weighed against the relative stake in the case. In analyzing this factor, the court should consider other awards "made in similar litigation within and without the court's circuit." Johnson at 719. It is this particular factor that first drew the attention of the court as a problem in this case. The court has seldom seen fees as high as they are in this case and has never seen ones in a case in such transparent simplicity. This factor weighs heavily on the courts mind in the evaluation of the ultimate award. The Court finds that given the issues in this case, the case should have settled, with fees in the range of five thousand dollars. Even tried as it was, the fees in this case should not have exceeded ten to fifteen thousand dollars. That the fees were as high as they were in this case is a monument to the scorched earth, multi-arena litigative techniqu6 employed by the Plaintiff.

The next factor set forth in Johnson is the preclusion of other employment by the attorney due to the acceptance of this case. This court has had the pleasure of dealing with both of these lawyers on other matters both within the Division of Lincoln and other divisions in this District on sufficiently frequent occasions during the pendency of this case to know that their practices have not ground to a halt as a result of their involvement here. For that reason, this factor is not a relevant one in the analysis of these fees.

The next three factors set forth in Johnson are: 6) whether the fee is fixed or contingent; 7) time limitations imposed by the client or the circumstances; and 10) the

undesirability of the case. The fixed or contingent fee aspect as compared to an appropriate hourly rate is not applicable to the case. There were no limitations imposed by the client or the circumstances requiring that undo amount of "overtime". The undesirability factor deals primarily with civil rights cases and the reward for the acceptance of employment that would put the lawyer in social and economic jeopardy. While none of these other factors are relevant to the instant case, the undesirability factor does come into play somewhat. Defense counsel's affidavit of 20 June 1994 outlines with painful clarity the personal abuse to which she has been subjected in this case. The Court can do nothing else for her and her client than the ultimate result of todays Order.

The next factor set forth in Johnson is the amount involved and the results obtained. While the size of the monetary award is relevant to determining the size of the fee award, there are several reasons why the use of this factor is considered inappropriate in the context of the domestic relations case. First, it is illogical to order one spouse to pay for the beneficial result obtained by the other. Darden v Witham, 209 SE 2nd 42 (S.C. 1974)(Brailsford, dissenting). Secondly, as a Florida Court has commented, "to exact fee money in an amount determined in such major part by the [parties] financial gain from the divorce judgment does not serve the policy on which such awards are justified. Rather it implies that [the party] was 'the big winner' of a financial contest and penalizes [the other party] for being 'the big loser'. We do not consider that to have been the purpose of awarding fee money in divorcelitigation, and it certainly is not the purpose in todays proceedings. Valpariso Bank & Trust Company v Sims 343 So. 2nd 967 at 972 (Fla. 1977).

While the size of marital estate should never be used as a reason to increase the size of the fee award, it could quite logically be used as a factor to diminish the fee award, because in a domestic relations case the fee award does not come from some source other than the marital estate, but necessarily comes from within the marital estate, hence diminishing it. If we were to exclude this factor, we

might frequently end up with the absurd, Dickensian result of the marital estate being eaten up in its entirety by attorneys fees. Lawyers and presiding judges must necessarily keep the ultimate stake of the controversy in mind in determining the scope and breadth of litigation. Lawyers who fail to do that do so at risk of a significantly reduced fee. The factor is clearly implicit in the Most case, supra, which teaches us that "reasonable" attorneys fees may be allocated between the parties on the basis of their "relative capacity to absorb the cost of litigation" Most v Most 477 A 2nd at 263. The Court today has chosen to disregard Plaintiff's attorney's fees because of the considerations of fault set forth below. To the extent that today's decision diminishes Plaintiff's portion of the marital estate, it is sad, and unfortunate, but it is his own handiwork. Defense counsel's affidavit of 20 June 1994 shows that better offers were made to him early in the case, yet he refused them. He did so at his peril.

The last factor set forth in Johnson is the nature and length of the professional relationship of the client. A lawyer in private practice may legitimately vary his fee of similar work in light of the long-term relationship between the client and the office. No evidence to the contrary being presented by Plaintiff, it is the assumption that he would pay at counsels' higher rate. Defense counsel has set a lower rate for her client, so both parties gain the benefit of that bargain.

While not outlined in the Johnson case, two other issues have been presented: first whether the fees for services rendered by paralegals can be included in an award of reasonable counsel fees. In First New Hampshire Banks Granite State vs Scarborough, 615 A 2nd 248 (Me 1992) the Law Court indicated that paralegal fees which are "fair and reasonable charges for the legal services rendered" may be included in the fee award. Id at 251. Defense counsel's affidavit outlines 37.2 hours at $65 dollars per hour. The Court finds that both the amount of time and the hourly rate are reasonable, and allow them.

Secondly, the issue has been raised whether computerized legal research services expenses may be properly included in a court's fee award. While there is no Main?-- case law on point, the Federal Circuits are split. Federal District Court for the District of Maine has excluded computerized research expenses from its fee awards on the theory that this is overhead and that the client is paying for the time of the lawyer utilizing the research computer facility. Auburn Police Union v Tierney, 762 F.Supp.3 (D.Me 1991); Weinberger, supra. Cf In Re: Continental Illinois Securities Litigation, 962 F.2nd 566 (7th Cir. 1992) This court is going to adopt the position of the District of Maine. Defense counsel's request for $791 in "Lexus" time is not allowed.

The next major issue to be dealt with are the rules concerning allocation of fees between the parties. With regard to any and all fees generated by the Protection from Abuse case, the answer is clear. 19 M.R.S.A. Sec. 766 (i) states, amongst the other relief available to be granted in a protection from abuse case, the Court may "Order ... the defendant or, if the complaint is dismissed, the plaintiff, to pay court costs or reasonable attorneys fees". The section does not require the court to order fees but leaves it discretionary. This language, taken with the intendment of the legislature in enacting this Protection From Abuse Chapter, however, makes it clear that the factors for allocating the fees are completely different than those allocated in the divorce chapter under 19 M.R.S.A. Sec. 722 (3). While the abilities of the parties to pay and their capacity to absorb the costs of litigation can and should be considered, another, and considerable, factor would be the concept of "fault" as the term has meaning in its traditional sense. Given that factor, and the other factors cited above, the court is going to order the defendant to pay all of plaintiffs reasonable attorneys fees directly related to the protection from abuse case. The Court finds that this amount is $1283.

The next issue before the court is whether or not, in its allocation of fees in the divorce case, the court can look at factors other than the relative capacity of the parties to

absorb the costs of litigation outlined in Most. Given the pending sale of the real estate in this case, they both have the capacity to absorb the expense of this litigation. This question has been settled somewhat in Gray vs Gray 609 A.2nd 694 (Me.1992) in which the Law Court indicated that, in addition to the relative financial ability of the parties, the conduct of the parties in the course of the litigation should be considered in determining the allocation of fees. The Law Court found that the husbands "conduct during the litigation, including his failure to cooperate in discovery, increased legal costs incurred by the wife." For this reason and the fact that the husband was in a superior economic position, the court held that the award of attorneys fees and costs to the wife under 19 M.R.S.A. Sec. 722 (3)was not an abuse of the trial courts discretion. It could be argued that the Court's statements concerning unnecessary conduct during litigation was nothing more than superfluous dicta that the court tacked on to an opinion as more of a reprimand than an opinion as to what the law is, or should be, in this area. According to this view, the basis of the court's allocation was the relative financial abilities to pay. This Court feels that a more reasonable interpretation of the Law Court's holding in Gray is that borderline frivolous conduct by one party which increases the legal expenses of the other party should be paid by the party whose actions created the expenses, regardless of the parties relative economic position.

This view is well supported by courts in other jurisdictions. it would appear to be well established in other states that an award of attorneys fees may be allowed against a spouse where the spouses actions have created unnecessary expenditures. In Re: Marriage of Clapperton, 649 P. 2nd 620 (Or. 1982); In Re: Marriage of Merry, 689 P. 2nd 1250 (Mont. 1984); Gardner vs Gardner, 629 P. 2nd 1283 (Okla. 1991); Kruger vs Kruger 679 P. 2nd 961 (Wash. 1984); Hammonds v Hammonds, 583 S.W.2nd 807 (Tex. 1979); Gant v Gant, 329 SE 2nd 106 (W.Va. 1985); Senger vs Senger 308 N.W. 2nd 395 (S.D. 1981). In the Gardner case, the Oklahoma Court stated that the trial court had discretion in a divorce proceedings to allocate fees

attributable to "arbitrary and capricious conduct" by one spouse which "increased the overall costs of litigation" to the "offending party" 629 P. 2nd at 1286. Similarly, in the Kruger case, the Washington Court indicated that the trial court had not abused the discretion in awarding attorneys fees of one of the parties to the other party where the fees "were required because of the intransigence" of the other parties. 679 P.2nd at 963. In Gant, the Supreme Court of West Virginia held that the allocation of attorneys fees to the appellant was not an abuse of the trial courts discretion where "most of the litigation in the case was a direct result of the appellants own litigious behavior and his willful resistance to court orders." 329 S.E.2nd at 118. Court made law in this area is consistent with recent trends among state legislatures to require a party engaging in unnecessary conduct to pay that portion of the parties fees which are attributable to that conduct.. In California, the legislature of that state enacted a provision in the state's divorce statute directing the trial court in awarding the attorneys fees to take into consideration "the extent to which the conduct of each party and the attorney furthers and frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the costs of litigation by encouraging cooperation between the parties and attorneys." Responding to the statute, one California court has stated "in enacting the statute the legislature for the first time acknowledged that reprehensible conduct short of bad faith was a pertinent factor in a courts determination of a proper attorneys fee award." in re: Marriage of Malone, 238 Cal. Rptr. 510, 515 (1987). This Court adopts the position that, in addition to the factors set forth in Most, the trial court, in allocating attorneys fees between the parties may look to a factor which, for the want of a better word, it will call "fault". This "fault" is not to be confused with the term of art used as a grounds for divorce, but rather to the conduct of one or other of the parties during the course of litigation which, while not rising to the level of bad faith, either creates unnecessary delay and confusion or was arbitrary and capricious, or which act was so out of line with regard to the legal or practical benefits to be

obtained from it that its net effect can be said to be fruitless.

If ever there were a case for finding this conduct, Plaintiff's behavior in this case is it. The Court has found elsewhere in its many decisions the facts sufficient to support this finding. The painful litany will not be repeated here. There can be no fair result other than that he must bear all of the burden of this absurdly expensive litigation, both his own and the Defendant's. This result also eliminates the necessity of examining the Plaintiff's counsel's bills in detail. The burden of proof is upon every proponent. Details of billing must be clear. Weinberger, supra. Plaintiff's counsel's bill were undetailed, general, and generously rounded. Careful analysis would have been difficult, if not impossible.

Based upon the foregoing considerations, the Court finds that a reasonable fee for the prosecution of the protection from abuse case to be $1283. in addition, the Court finds that a reasonable fee for the defense of this divorce case, as it was needed to be defended, was $17,112. Because it is not ordering any fees to be paid by Defendant, analysis of Plaintiff's counsel's bill will left for another date and another forum. It is therefore ORDERED that Plaintiff pay to Elizabeth J. Scheffee, Esq. and the Law Firm of Givertz, Lunt, Hambly and Scheffee $1283 as and for attorneys 'fees for the prosecution of the protection from abuse case. and $17,112 as and for fees for the defense of the divorce case, to be paid from the proceeds of the sale of the marital home when it is sold in accordance with this Court's previous Judgment.

DOCKET ENTRY

The Clerk shall enter the following entry in the docket: Plaintiff to Elizabeth J. Scheffee, Esq. and the Firm of Givertz, Lunt, Hambly and Scheffee the amount of $1283 in WIS-91-PA-4-3 and $17,112 in -WIS-91-DV-123 as and for fees for the prosecution of the protection from abuse case and defense of the divorce. The Order of Counsel Fees dated 4 December 1994 is incorporated in the docket by reference. This

entry is made in accordance with M.R.Civ.P. 79(a) at the specific direction of the Court.

Dated 4 December, 1994
/s#Joseph Field
Joseph H. Field
Judge, Maine District Court

**ORDER UPON REFERENCE**

***The court sponsored theft of the marital home which no court nor law enforcement agency in Maine will deal with. Appealed when Attorney was found to have lied about powers of referee.***

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| STATE OF MAINE<br>Lincoln, ss. | DISTRICT COURT<br>DISTRICT SIX<br>DIVISION OF LINCOLN<br>LOCATION – WISCASSET<br>DOCKET # WIS-91-DV-123 |
| JAMES W. VOGT<br>PLAINTIFF | ) |
| V<br>NANCY J. CHURCHILL<br>DEFENDANT | ) ORDER UPON<br>) REFERENCE |

Plaintiff Filed a Motion to Amend 31 May 1994. This matter was referred to a referee pursuant to the provisions of Rule 53, Maine Rules of Civil Procedure by Order of this Court dated 5 July 1994. The Court has received the report of the referee, and notice of filing sent to the parties. No objection being heard, it is therefore ORDERED that the report of Dana A. Cleaves, Esq. dated 9 September 1994, is adopted in whole, and incorporated

in this judgment as if fully set forth herein, with the exception of the referee's proposed child support and immediate withholding orders. With regard to these, the Court adopts the findings and proposals, but issues the orders separately today over the signature of a Judge of the Maine District Court in order to comply with current child support statutes and procedure.

Dated 6 October, 1994
/s#Joseph Field
Joseph H. Field
Judge, Maine District Court

**ORDER PENDING DIVORCE**

***Appeal not dealt with at any level because a judge and officer of the Maine Bar Association facilitated the theft.***

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| STATE OF MAINE | DISTRICT COURT |
| Lincoln, ss. | DISTRICT SIX |
| | DIVISION OF LINCOLN |
| | LOCATION – WISCASSET |
| | DOCKET # WIS-91-DV-123 |
| JAMES W. VOGT | ) |
| PLAINTIFF | ) |
| | ) |
| V | ) ORDER PENDING |
| NANCY J. CHURCHILL | ) DIVORCE |
| DEFENDANT | ) |

Paragraphs 1-6 omitted as not relative to appeal

The parties have also settled certain marital property issues. As a result:
IT IS FURTHER ORDERED THAT:

1. the defendant shall pay to the Plaintiff the sum of Forty-Eight-Thousand-Eight-Hundred-and-Four dollars and no cents (48,804.00). This sum represents the amount payable under the Judgment of Divorce after subtracting the amount the Plaintiff was to pay on the home equity loan in the sum of Six-Thousand-Nine-Hundred-and Forty-One dollars and no cents, One-thousand-and-six hundred dollars and no cents.

2. Defendant shall upon the signing of this order immediately and expeditiously refinance the existing home equity loan and using the house as collateral, borrow sufficient sums to pay this debt.

3. At the closing of the loan:

A. A certified check in the sum of receipt of the Forty—Eight-Thousand-Eight-Hundred-and –Four dollars and no cents shall be delivered to the Plaintiff.

B. Plaintiff shall execute and deliver a quit-claim deed with covenant to the Defendant transferring all of his right title and interest in the marital residence to the defendant and setting the property aside to Nancy J. Churchill as her sole and exclusive property, to wit:

Real Estate located at Dresden, Maine, more particularly described in the deed from Nancy J. Churchill to nancy J. Churchill and James Vogt recorded in the Lincoln County Registry of Deeds in Book 1688, page 146.

Therefore, the marital residence shall not be sold as ordered in the divorce judgement.

4. Upon receipt of the forty-eight-thousand-eight-hundred and for dollars and no cents, Plaintiff shall deliver to the Defendant all of the documents, records and

calculations in his possession relating to the house, including but not limited to the money and time spent on the purchase and construction of the marital residence.

5. Each party shall be responsible for the payment of his or her tax liability associated with the transfer or sale of the marital residence and shall hold the other harmless with respect to that liability.

6. This judgment by agreement is in full settlement of the rights that each party had in the marital property.

7. In all other respects the parties agree to the property division set forth in the divorce judgment.

8. The parties waive their appeal rights with regards to the marital property issues.

9. Finally, the parties have agreed that the judgment of divorce shall be final insofar as it grants a divorce to the parties.

Dated 29 September, 1994
/s#Dana A Cleaves
Referee

**ORDER ON DEFENDANT'S REQUEST FOR INJUNCTIVE RELIEF**

***The "Spicker order" used to protect corrupt judges and lawyers.***

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| STATE OF MAINE | DISTRICT COURT |
| Lincoln, ss. | DISTRICT SIX |
| | DIVISION OF LINCOLN |
| | LOCATION – WISCASSET |
| | DOCKET # WIS-91-DV-123 |
| JAMES W. VOGT | ) |
| PLAINTIFF | ) |
| | ) |
| V | ) ORDER PENDING |
| NANCY J. CHURCHILL | ) DIVORCE |
| DEFENDANT | ) |

Defendant's Motion for Permanent Injunction dated April 11, 1995 is GRANTED. The Court further FINDS, ORDERS, and DECREES:

I . Since the entry of Divorce Judgment in this matter on August 11, 1993, Plaintiff has engaged in a course of conduct which this Court has noted in its previous judgments, and which Defendant brought to the Court's attention in specific detail in her pleadings and at the November 14, 1995 hearing of this matter, to wit:

a. Plaintiff has instituted numerous lawsuits and/or grievances against attorneys, witnesses, judges, and professionals -connected with this divorce proceeding.

b. Plaintiff reported the following individuals to their respective licensing boards: Defendant's counsel (Elizabeth Scheffee); Plaintiff's previous attorney (Nicholas Walsh); the Guardian ad Litem for the parties' children, Lynda Doyle; one of Defendant's expert witnesses, Mary-Gay Kennedy; Mr. Geoff Rushlau; Defendant's therapist; Leanne Robbins; Judge Michael Wescott; Judge Joseph H. Field; and Stephen C. Lunt.

C. Plaintiff has filed numerous adverse reports about Defendant with the Internal Revenue Service and the New York State Department of Taxation, and the Maine Bureau of Taxation, alleging tax fraud, to the Maine Department of Human Services alleging child abuse, and with various Maine newspapers, alleging child neglect, child abuse, and tax fraud.

d. On October 26, 1994., Plaintiff filed an action for civil rights violations in Lincoln County Superior Court against the Honorable Joseph Field (Docket No. CV-94-95), which action was dismissed.

e. On November 3, 1994, Plaintiff filed an action in Federal District Court, Docket No. 94-335-P-H, against Defendant, Defendant's counsel, the Honorable Joseph Field, Joseph Molnar, Geoff Rushlau, Lynda Doyle, and Michael Carpenter. The action against all Defendants was subsequently dismissed; Plaintiff filed an interlocutory appeal, which was also dismissed. Plaintiff then filed an appeal of the dismissal to the First Circuit Court of Appeals of the united States.

f. On November 23, 1994, Plaintiff filed an action for slander and libel against Defendant and Defendant's attorney, Lincoln County Superior Court, Docket No. CV-94-104, which action is pending.

g- On March 28, 1995, Plaintiff filed a second action in Federal District Court for civil rights violations against the same Defendants' named in his November 3, 1994 complaint, Docket No. 95-103-P-H.

h. Thus, several of the individuals involved in this case have been sued three and, in two instances,

four times by Plaintiff, in addition to responding to the professional grievances Plaintiff instituted against them.

i. in addition, Plaintiff has complained about some or all of the previously named individuals with the Attorney General's office, with the Maine Civil Liberties Union, the Maine State Legislature, the Chief Justice of the Maine Supreme Court, and the United States Attorney General.

**2.** The Court finds Plaintiff filed the complaints, grievances, and petitions to interpose confusion and delay.

3. This Court has authority under Spickler v. Key Bank, 618 A.2d 204 (1992), to issue injunctive relief based on these circumstances.

Therefore:

1. Plaintiff is ENJOINED and PROHIBITED from filing any complaints, pleadings, or petitions against any individual involved in this litigation including, but not limited to, parties, agents, attorneys, court officers, employers, and witnesses in any court located in this state unless the document is countersigned by an attorney licensed to practice in this state, approved by the judge presiding in the court where the document is filed or a presiding judge of the sixth district court. This injunction does not preclude Plaintiff from filing appellate briefs in his pending appeals in state and federal courts, and nor does it preclude motions Plaintiff files in the prosecution or defense of actions currently pending in state court.

However, should Plaintiff file a motion in the prosecution or defense of currently pending litigation, it must be supported specifically by the applicable rules of civil procedure, statutory citation, and/or case law. In addition, Plaintiff must first obtain the approval of any judge of the Court where the motion is being filed and

provide Defendant a copy of the authorization before a response is required or a hearing on the motion is held.

**2.** Plaintiff is further ENJOINED and PROHIBITED from filing any further grievance or complaint against any professional involved in this litigation with an agency which regulates that individual's professional conduct without first obtaining the written, advance approval of either a judge of the Sixth District Court or the chair of the subject licensing board.

The clerk shall enter the forgoing order on Defendant's request for injunctive relief on the docket by a notation incorporating it by reference pursuant to M.R.C.P 79(a).

Dated 5 February, 1996
/s#Joseph Field
Joseph H. Field
Judge, Maine District Court

**REFUSAL TO GRANT PERMISSION UNDER THE SPICKLER ORDER**

***One example of how Maine Judges used the spickler order to protect the corrupt among them***

Letter, March 22nd, 1999
Clerk, Lincoln County Superior Court
PO BOX 249
Wiscasset, ME 04578

RE: CV-94-110-111, Permission to file under the spickler order

Dear Clerk:

I request permission to file a complaint of grand theft with the Lincoln County District Attorney and the US Attorney General regarding the theft of my interest in the marital home.

I have attached copies of the deed transfers associated with this theft.

Failure to grant this permission would constitute a willful violation of my State and Federal rights to seek redress, equal protection of the law, free speech and, certainly, given you would never allow a male to steal the property of a female, discrimination based on sex. Furthermore, such a denial, given I believe at least one officer of the court is culpable in this theft, a violation of my civil rights under color of law and conspiracy to violate those rights would also apply.

Thank You
/s#James W. Vogt
41 Swetts Bridge Road
Alfred, ME 04002

Permission is granted for James W. Vogt to file complaints with the Lincoln County District Attorney and US Attorney General regarding the questionable transfer of property described above and demonstrated by the documents attached.

_____ Justice, Superior Court

Dated: _____

**Written in pen on this letter, received by the Clerk on Mar 22, was the following denial:**

'3/31/99. Since this "request" is not in conformance with any recognized judicial process and the "Spickler Order" so-called sets forth specific procedures for seeking to file matters against individuals etc., in the courts and with certain agencies, the clerk is directed to place the document in file with no further action. it is recommended that the applicant seek advice of counsel.
3/31/99
/s#Stephen L. Perkins
Active-Retired Justice, Superior Court

**REFUSAL TO GRANT PERMISSION UNDER THE SPICKLER ORDER**

***Ambiguity of Order***

Denial of Permission (After fraudulent deed transfer)

State of Maine
Lincoln County
Superior Court
No docket, no case reference

James W. Vogt
v
Nancy Churchill

This cause came before the court upon the request of James W. Vogt for permission to file a complaint as attached hereto pertaining to the fraudulent transfer of real estate, and it appearing that the complaint is neither signed by the complainant nor "countersigned by an attorney licensed to practice in this state" pursuant to the order of

court dated February 5, 1996 IT IS ORDERED that the clerk of courts is directed to reject this complaint for filing in the superior court for Lincoln county for the reasons stated above. Permission to file complaint is denied.

June 17, 1996
/s#Stephen L. Perkins
Active-Retired Justice, Superior Court

Letter to Perkins, RE denial
June 19th 1996
Dear Justice Perkins:

I was somewhat surprised at two comments you made in court on June 18th. The firs, that the injunction required me to have an attorney sign off on any complaint. The second, that you had dealt with something relating to me and that I had not followed the order.

When I returned home from that hearing your denial of my request ot file a complaint was in my mail. You stated the reasons you denied were that I did not sign the complaint and that I did not have it countersigned by an attorney. I wish to respond as follows:

1. I did not sign the complaint because I submitted it for approval, not for submission. In the past, this is the manner in which Judge Field has proceeded. I expect approval or denial. Upon approval, I would have sent it on to the clerk with your approval. I am sorry for any inconvenience this may have caused.

2. As I read the order and the transcript of the hearing at which Judge Field dictated the injunction, neither required the signature of an attorney. Judge Field made the requirement for an attorney OR by the judge in the presiding court OR a presiding judge of the sixth district court. The requirement for an attorney was not in addition

to or a stand alone requirement. I believe that if it were, Judge Field's order would simply have placed myself (and anyone else without funds) in a position of being excluded from obtaining relief from the courts. I believe, given I cannot afford an attorney (which is why I do these myself) that such a provision would be another violation of Constitutional guarantees (unless the court appoints an attorey). I have attached a copy of the annotated order I received from Judge Field, highlighted. As you can see, Judge Field "whited out" the 'or' between state and approved, and aded a comma in place of the "or", and replaced the period at the end of the sentence with a comma and added the statement "or presiding judge of the sixth district court".

I ask that you review this provision of Field's order. Should you not agree that it reads as I have intrepreted I will as Judge Field to clarify. Shoud you agree that the only the approval of a Superior Court Justice of District Court Judge is sufficient, kindly review the complaint and either allow or deny (giving me your rationale for denial).

6/19/1996
/s#James W. Vogt

Order, Request for Reconsideration
State of Maine
Lincoln County
Superior Court
No docket, no case reference

James W. Vogt
v

Nancy Churchill

This matter came before the court on a request of James W. Vogt to reconsider the order of this court dated June 17th, 1996, seeking authority of the Superior Court to permit him to file a complaint in accourdance with procedures set forth by Judge Field of the Maine District Court in his order of February 5, 1996.

While the order of Judge Field is somewhat ambiguous, this court upon further review accepts the interpretation given by the complainant as reasonable alternative methods that may be utilized by him to file a complaint with the court in certain specific instances.

Nevertheless, the court does believe and so finds that the signature of the complainant is required on the initial filing with the court seeking approval of the filing if the complaint does not carry the signature of an attorney. In this case, it did not.

Therefore, the ruling of June 17th, 1996 denying acceptance of the complaint for filing is affirmed.
August 21, 1996
/s#Stephen L. Perkins
Active-Retired Justice, Superior Court

Denial of right to appeal – After theft

State of Maine
Lincoln County
Superior Court
No docket, no case reference

This cause came before the court on the request of James W. Vogt to appeal the Order of Justice Perkins dated August 21, 1996 (denial of permission to file complaint). It is ordered that request to appeal order of Justice Perkins is DENIED
September 30th, 1996
/s#Robert E. Crowley
Justice, Superior Court

**DENIALS UNDER SPICKLER BY FIELD**

Letter dated April 22nd, 1996
Vogt to Field
Permissions required per your injunction

Kindly give me permission to file the following papers in the courts designated:

1. Writ, USSC, dismissal of Scheffee, etc.
Written in pen beside this item by Judge Field: "Granted".

3. Briefs to Superior Court for Appeal of Divorce. Written in pen beside this item by Judge Field: "Already Granted".

4. Complaint, Superior Court, Committee on Judicial Responsibility refusing to provide information under freedom of access laws. Written in pen beside this item by Judge Field: "Denied".

5. Complaint to DHS regarding endless false statements by Churchill. Written in pen beside this item by Judge Field: "Denied".

**DECISION AND ORDER, SUPERIOR CT**

| | |
|---|---|
| STATE OF MAINE | SUPERIOR COURT |
| Lincoln, ss. | CIVIL ACTION |
| | DIVISION OF LINCOLN |
| | DOCKET CV-94-110 |
| | CV-94-111 CONSOL |
| JAMES W. VOGT ) | |
| PLAINTIFF/APPELLANT) | |
| ) | |
| V ) | DECISION AND |
| NANCY J. CHURCHILL ) | ORDER |
| DEFENDANT/ ) | |
| APPELLANT ) | |

This matter is before this Court on Mr. Vogt's consolidated appeals pursuant to M.R. Civ. P. 76D. For the following reasons, Mr. Vogt's appeals are denied.

FACTS

The parties were married on February 15, 1988 in Perth, Australia. They have two minor children, Robin and Zoe, twins born on September 14, 1989. Mr. Vogt filed for divorce on August 29, 1991. On October 25, 1991 Judge Westcott issued an ~ /."-N ~ order pending divorce. The divorce judgment was issued by Judge Field on August 13,1993. Mr. Vogt filed a notice of appeal of this judgment on August 20,1993.

DISCUSSION

Standard of Review Issues arising out of a divorce action, such as property division, alimony, custody and child

support, are within the court's sound discretion, and the judgment of the court on such matters is entitled to substantial deference. As long as there is rational or credible evidence in the record supporting the divorce court's decision, the judgment will not be overturned on appeal. Knight v. Knight, 680 A-2d 1035, 1037 (Me. 1996) (citations omitted). The factual findings of the trial court will not be set aside unless they are clearly erroneous and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. M.R. Civ. P. 52(a); Harmon v. Emerson, 425 A.2d 978, 981 (Me. 1981). Under the clearly erroneous test, "a lower court's findings of fact will stand unless they clearly cannot be correct because there is no competent evidence to support them." original). Lewisohn v. State, 433 A.2d 351, 354 (Me. 1981) (emphasis in Parental Rights and Resi2onsibilities and Primary Residence "The lanv of this state recognizes that in making custody determinations, the trial judge who is asked to act as a wise, affectionate, and careful parent to.do what is best for the interest of the child must be held to be invested with a broad discretion." Harmon, 425 A.2d at 983. The standard of review is whether the trial judge's decision was so erroneous as to constitute an abuse of discretion. Id. The trial court awarded sole parental rights and responsibilities and primary residence of the children to Ms: Churchill. Because there is rational and credible evidence in the record supporting this decision, Mr. Vogt's appeal on this ground must be denied. Child Sul2port "[There is a rebuttable presumption that the parental support obligation derived from the support guidelines is the amount ordered to be paid." 19-A M.R.S.A. § 2005 (1998). This presumption can be overcome if it is shown that a child support order based solely on the support guidelines would be "inequitable or unjust" due to one or more of the

considerations listed in 19-A M.R.S.A. § 2007(3). The trial court order Mr. Vogt to pay $168 per week towards the support of the children based upon support guidelines. Mr. Vogt has failed to rebut the section 2005 -presumption or to show that the trial court's order on this issue was clearly erroneous. Therefore, his appeal on this issue must be denied.

Division of Property

The division of marital property is committed to the discretion of the trial court. Most v. Most, 477 A-2d 250, 262 (Me. 1984). "The statute directs a 'just' not an equal division of marital property." Pongonis v. Pongotzis, 606 A.2d 1055,1058 (Me. 1992). See also 19-A M.R.S.A. § 953(l) (1998). "Absent a violation of some positive rule of law, this Court will overturn tl-te trial court's decision only if it results in a plain and unmistakable injustice, so apparent that it is instantly visible without argument." Pongotiis, 606 A.2d at 1058 (quoting Atiderson v. Aliderson, 591 A.2d 872,874 (Me. 1991)). In making the property division in the instant case, the trial court decided to put each party back to the same position they were in at the time of their marriage because they were married for only a short time. It is well settled that the court can w consider the length of the marriage in determining the disposition of marital property. Eaton v. Eaton, 447 A-2d 829, 831 (Me. 1982). In considering the relative positions of the parties at the time they married, the trial court found that Ms. Churchill entered the marriage with significantly more assets than Mr. Vogt. The trial court found two marital assets, the home in Dresden and certain contributions to various retirement accounts. After considering the parties respective contributions to the real estate as well as the retirement accounts, the trial court

awarded $60,000 of the equity in the marital home to Mr. Vogt and the balance to Ms. Churchill. Considering the length of the marriage and the parties respective financial positions at the time they married, this property division did not result in a plain and unmistakable injustice so as to warrant reversal of the trial court's decision.

Attorney Fees

On the issue of attorney fees, the trial court ordered Mr. Vogt to pay Ms. Churchill's attorney $1283 for the prosecution of the protection from abuse case and $17,112 for the defense of the divorce action. In making this order, the trial court judge considered extensively the twelve factors outlined in Poussard v. Commercial Credit Plan, 479 A.2d 881, 884 (Me. 1984) as well as the Law Court's admonition in Most v. Most, 477 A.2d 250, 263 (Me. 1984) that the court "consider the parties' relative capacity to absorb the costs of litigation." The trial court also considered the conduct of the parties during the course of this litigation and found that as a result of Mr. Vogt's behavior "there can be no fair result other than that he must bear all of the burden of this absurdly expensive litigation, both his own and [Ms. Churchill's]." 12/4/94 Order p. 10. It is not an abuse of discretion for the trial court to consider the parties' behavior during the course of the litigation in making an award of attorney fees. See Rosen v. Rosen, 651 A.2d 335, 337 (Me. 1994) (holding that the trial court "has discretion to consider all factors that reasonably bear on the fairness and the justness of the award"); Gray v. Gray, 609 A.2d 694, 699 (Me. 1992) (noting that appellant's "conduct during the litigation, particularly his failure to cooperate in discovery, increased the legal costs incurred by [appellee]").

Appeal of the August 9, 1994 Protection from Abuse Order

A protective order or approved consent agreement is for a fixed period of not to exceed two years. 19-A M.R.S.A. § 4007(2) (1998). Mr. Vogt has appealed the consented to protection from abuse order that was entered into on August 9, The order expired on August 9, 1996 and Mr. Vogt's appeal of that Order became moot at that time. See Sordyl v. Sordyl, 1997 ME 87, 692 A.2d 1386. Appeal of the February 5, 1996 "Spickler" Order On February 5, 1996 the trial court granted Ms. Churchill's motion for injunctive relief and issued a "Spickler" order against Mr. Vogt. It appears from the District Court docket sheet that Mr. Vogt failed to file a timely Notice of Appeal of this order as required by M.R. Civ. P. 76D. The Superior Court may dismiss an appeal from the District Court "[i]f an appellant fails to comply with the provisions of Rules 76D through 76G within the time prescribed therein." M.R. Civ. P. 76D. However, even if Mr. Vogt had filed a timely Notice of Appeal of the "Spickler" order, the trial court's decision to enter the order would be upheld on appeal. "A court properly may enjoin a party from filing frivolous and vexatious lawsuits." Spickler v. Dtibe, 644 A.2d 465, 468 (Me. 1994). The court's issuance of the injunction is reviewed for an abuse of discretion and the factual findings underlying the exercise of that discretion for clear error. Id. at 467. The party seeking the injunction "must make a detailed showing of a pattern of abusive and frivolous litigation, and the court must not issue a more comprehensive injunction than is necessary." Id. at 468-69. These requirements were met in this case and so the trial court did not abuse its discretion in issuing the "Spickler" order against Mr. Vogt. 0 Denial of Mr. Vogt's Motions for Recusal of Judge Field "Recusal is a matter

within the broad discretion of the trial court." Estate Of Dineen, 1998 ME 268, T 8, 721 A.2d 185, 188. The denial of a motion to recuse is reviewed for an abuse of discretion. id, There is nothing in this record to indicate that the trial judge did not render his decisions and orders impartially or that his denial of the motio@,is to recuse was an abuse of discretion. See State v. Marden, 673 A.2d 1304,1308 (Me. 1996). Other Asserted Errors Mr. Vogt has raised several other claimed errors which do not require discussion other than to note that they are not meritorious.

Wherefore the entry shall be
Appellant's appeals are denied
June 2, 1999
/s#Stephen Perkins
Active-retired justice, Superior Court

**DECISION – DHS HEARING OFFICER**

State of Maine
Department of Human Services
Case # 200229764P
TO: James W. Vogt
Decision

This decision is rendered pursuant to 1 9 MRSA sec. 51 5 and rules promulgated thereunder.
TO: James W. Vogt
RR # 4,
95-A Swetts Bridge Road
Alfred, ME 04002

DECISION

Pursuant to your request for review of the child support obligation of James W. Vogt, a hearing was held on Thursday, October 31, 1 996, in Biddeford , Maine, before David Bussey, a hearings officer. The hearings officer's jurisdiction was conferred by special appointment from the Commissioner, Department of Human Services. The issues at the hearing were limited to the matters raised in the Affidavit or Affirmation that accompanied the request for review: No affidavit or affirmation accompanied Mr, Vogt's request for hearing. It was concluded at hearing that the single issue subject to review in this proceeding is the accuracy of an allegation set out in a Maine Department of Human Services Division of Support Enforcement and Recovery Notice of Debt, dated December 21, 1 995. 1 The Notice of Debtr health, dental, and eye care costs incurred for his children- Robin L. Churchill- Vogt (dob 9/1 4/89) and Zoe R. Churchill-Vogt (dob 9/1 4/89). Mr. Vogt argued at hearing that the amounts alleged due included amounts that were previously paid by insurance, or were from periods in which he did not have an obligation to pay any of the children's medical costs, or were for expenses incurred for his ex-wife and not for his children, or were not due from him for other reasons.

At the-close of hearing, the Department's representative requested additional time to review Mr. Vogt's evidence, with the intention that the Department would remove charges from the list of amounts alleged due, if with regard to any of the charges Mr. Vogt's evidence raised a defense that the Division of Support Enforcement and Recovery considered to be legitimate.

The Department's representative concluded after reviewing Mr. Vogt's evidence that of the $446.80

originally alleged due from him, it would continue to seek payment from him of only $235.42. Only these remaining disputed charge2 are left for resolution in the present administrative hearing decision.

Appearing at the hearing on behalf of the agency were the following people: Paul Hachey, Support Enforcement Supervisor Appearing on behalf of the responsible parent were the following people: James W. Vogt

The following items were introduced into evidence: 1. postal return receipt, and 1, 2/21/96 letter to James W. Vogt from Support Enforcement Agent Madeleine Salamonski, and 1 2/21/95 Notice of Debt 2. 8/1 1/93 Maine District Court Divorce Judgment and Conditional Order of Income Withholding 2A list of the charges that the Department's representative alleged due after 11-13-93 is set out in a November 13, 1996 letter to the Hearings Officer from the representative; Record item 3 1. November 22, 1996 (the remainder left out)
contained the allegation that although Mr. Vogt had a positive credit balance with respect to his cash child support obligation, as of the date of its issuance Mr. Vogt owed $446.80 in I James W. Vogt made a timely request for hearing after he received the Notice of Debt, but no hearing was scheduled prior to October 31, 1996. The Division took collection action against Mr. Vogt, including forwarding the case to the IRS for interception of his federal income tax refund, after his request for hearing and before the hearing was scheduled. It has withdrawn all such collection actions pending the outcome of this administrative proceeding .Medical, psychological and related records submitted by James W. Vogt (marked 'Plaintiff's Exhibit #47".to "Plaintiff's Exhibit #99") 31.1 1/1 3/96 letter to David T. Bussey from Paul Hachey

(Division of Support Enforcement and Recovery representative at hearing) Also included in the record of this hearing are the following: A. 1 2/28/95 letter to M. Salamonski from James W. Vogt B. 1 2/28/95 letter to Division of Support Enforcement and Recovery supervisor, from James W. Vogt C. 9/20/96 letter to Maine Department of Human Services hearings clerk, from James W. Vogt D. 10/7/96 Notice of Hearing

The following findings of fact were made as a result of the hearing: The charges for health-related care or treatment that the Department continues to assert are due from James W. Vogt are-. a) January 1 994 charges by Margaret A. Ellis, M.D., for both children, plus prescription medications, totaling $96.74 (Exhibits 20, 21, 23) b) January 1 994 charges by Margaret A. Ellis, M.D., for the child Zoe, not reimbursed by insurance, a balance of $5.20 c) February 7, 1 995 charges by Susan Russett-Collett, D.D.S., for dental care or treatment for both children, totaling $1 36.00 (Exhibit 24) d) March 21, 1 995 charges by Susan Russett-Collett, D.D.S., for dental care or treatment for both children, totaling $106.00 (Exhibit 1 2) e) September 1 3, 1 995 charges by Susan Russett-Collett, D.D.S., for dental care or treatment for both children, totaling $106.00 (Exhibit 1 9) f) [April 5?1, 1 995 charges by Atlee/Gleaton Eye Care P.A., for eye examinations for both children, totaling $1 20.00 (Exhibit 25-26) No evidence was submitted that would demonstrate facts sufficient to serve as a basis upon which James W. Vogt might be excused from making contributions as ordered by his Divorce Judgment for the items referred to at (a) and (b) above. November22,1996 Page 4 e-"- "I'@ ell-- With reference to items (c), (d), Mr. Vogt did not present competent evidence showing that the services for which these amounts were billed were either unnecessary

or inappropriate. It is concluded that they were provided in the ordinary course of dental care for children. With reference to item (f), no basis has been shown upon which James W. Vogt might be excused from making contributions as ordered by his Divorce Judgment for these items. As a result of the evidence and argument presented at this review, the hearings officer has determined that: James W. Vogt owes a total of $235.42 as his share of the medical, dental, and eye care costs that the Division of Support Enforcement and Recovery now alleges to be, in part, his responsibility. The reason for reaching this conclusion is as follows: Mr. Vogt's obligation generally with reference to health care expenses for his children (during the periods in which the expenses in issue here were incurred) is not in dispute. The percentage share for which he is responsible is not in dispute. Mr. Vogt's arguments related to the specifics of individual charges for which his contributions were alleged due. As noted above, no basis has been shown upon which James W. Vogt might be excused from making contributions as ordered by his Divorce Judgment for the items referred to at (a) and (b). With reference to items (c), (d), and (e), Mr. Vogt has contended that expenditures totaling $408.00 in an 1 8-month period for treatment of baby teeth were unwarranted, and thus that he should not be obligated to contribute toward the full amount of these expenditures. Mr. Vogt did not, however, present competent evidence showing that the services for which these amounts were billed were either unnecessary or inappropriate. It is concluded that Mr. Vogt is obligated to contribute toward these dental care November 22, 1996 costs, in the amount of his share of such costs as established by the District Court. With reference to item (f), no basis has been shown upon which James W. Vogt might be excused from making contributions as ordered by

his Divorce Judgment for these items. Thus it must be concluded that Mr.-Vogt is obligated to contribute, at the percentage rates specified in applicable District Court orders, for all of the costs referred to above. Mr. Vogt did not indicate that he was contesting the Department's allegations that he is obligated to contribute 48% toward the costs for the services referred to in Exhibits 20-26, or $1 71.82 ($357.94 x 48% = $1 71.82), and that he is obligated to contribute 30% toward the costs for the services referred to in Exhibits 1 2 and 1 9, or $63.60 ($21 2.00 x 30% = $63.60). The total of Mr. Vogt's obligations is thus $235.42. You have a right to appeal this decision in Maine Superior Court under Rule 80C of the Maine Rules of Civil Procedure. If a pleading is filed for judicial review of this decision, collection action will not be stayed except as provided in the Maine Administrative Procedures Act, 5 MRSA Sec. 11004. DATED: November 22. 1996
/s#David T illegible
Hearings Officer

**DHS APPEAL DENIAL – PERKINS**

| | |
|---|---|
| STATE OF MAINE | SUPERIOR COURT |
| YORK, ss. | CIVIL ACTION |
| | DOCKET AP-98-043 |
| JAMES W. VOGT ) | |
| PLAINTIFF/APPELLANT) | |
| ) | |
| V ) | |
| MAINE DEPT OF HUMAN) | ORDER |
| SERVICES ) | |
| RESPONDENT ) | |

This matter is before the court on petitioiner's appeal of a corrected June 29, 1998 decision of a Heraing

officer of the Department of Human Services establishing the net child support debt of petitioner for the period of 8/13/93 through 1/6/98 at $2,442.14 and his net credit for health and dental and ey care as of 1/6/98 as $298.15.

Having reviewed the record and considered the memoranda and arguments of the parties, this court is stisfied that there was sufficient and substantial competent evidence to support the findings of the Hearing Officer. Neither does the decision reflect an abuse of discretion nor an error of law.

Therefore, the entry is

Appeal denied.

Decision of the Department of Human services affirmed.

Dated August 11th, 1999

/s#Stephen L. Perkins

Active-Retired Justice, Superior Court

## ORDER FOR PROTECTION FROM ABUSE

| | |
|---|---|
| STATE OF MAINE<br>Lincoln, ss. | DISTRICT COURT<br>DISTRICT SIX<br>DIVISION OF LINCOLN<br>LOCATION – WISCASSET<br>DOCKET # WIS-92-pa-043 |
| JAMES W. VOGT<br>DEFENDANT | ) |
| V | ) ORDER FOR |
| NANCY J. CHURCHILL<br>PLAINTIFF | ) PROTECTION FROM<br>) ABUSE |

The defendant is prohibited from threatening, assaulting, molesting, attacking, harassing or otherwise abusing the plaintiff.

The defendant is prohibited from going upon the premises of any place of employment of the plaintiff.

Plaintiff is awarded custody of minor children in accordance with Judge Westcotts order in the divorce (which was birdnesting, living in the same home and switching residence twice daily.)

Another issued again on 11 August 1993 without hearing.

/s#Joseph Field
Joseph H. Field
Judge, Maine District Court

## ORDER

***Aid and abet tampering, pay her $6000 in fees while finding her in contempt***

| | |
|---|---|
| STATE OF MAINE | DISTRICT COURT |
| Lincoln, ss. | DISTRICT SIX |
| | DIVISION OF LINCOLN |
| | LOCATION – WISCASSET |
| | DOCKET # WIS-92-pa-043 |
| JAMES W. VOGT | ) |
| DEFENDANT | ) |
| | ) |
| V | ) ORDER |
| NANCY J. CHURCHILL | ) |
| PLAINTIFF | ) |

This matter came before me during a case management conference held January 24, 1996. Plaintiff was present pro se, and Defendant was present through her counsel. The case management conference involved disposition of several motions heard by me on November 14, 1995, as well as the disposition of various motions subsequently filed by the parties. Based upon testimony and evidence presented by the parties at the November 14, 1995 hearing, - and the discussion held on the record at the case management conference, it is hereby ORDERED, ADJUDGED, and DECREED:

1. Plaintiff's Complaint for Protection from Harassment dated April 11, 1995 is DENIED. The facts and issues Plaintiff presented therein related to issues present during the hearing. Further, Plaintiff's need for relief will be addressed by his appeal of this matter.

2. Plaintiff's motion to set aside deed dated July 15, 1995 is DENIED.

3 . Plaintiff Is Motion Requesting Hearing for changing -Custody and Visitation dated August 16, 1995 is DENIED without prejudice. Plaintiff may resurrect this motion following his appeal and the entry of final judgment.

4 . Plaintiff Is Motion to Recuse dated August 31, 1995 is DENIED for reasons previously stated in orders dated November 6, 1993 and July 5, 1994, which denied Plaintiff's two previous motions to recuse.

5. Plaintiff's Motion for Specific Acts dated Septemher 1995 is DENIED.

6. Plaintiff Is Motion for Contempt dated October 5, 1995 is GRANTED. The Court finds that Defendant, Nancy Churchill, has interfered with Plaintiff's visitation with the children. The Court has expressed its belief that both parties love their children and have capacity to care for them in an appropriate way. The Court has 'no

concern about the children's welfare in either party's care. The Court finds, however, that Defendant used her allocation of sole parental rights and responsibilities in a way to minimize Plaintiff's contact with the children. Therefore, the Court ORDERS that Defendant make the children available during the time that the parties have arranged for telephone contact. Further, Defendant shall not schedule activities for the children which interfere with Plaintiff's visitation schedule with them. Defendant further shall not interfere with Plaintiff's management of the children while they are in his care, which includes monitoring his decision about day care. The court defers the issue of sanctions for this contempt (is written in pen after I complained that he did nothing about it, nor to prevent it).

7. if the parties reach agreement which alters the parent- child contact schedule contained in the divorce judgment, such agreement must be written and filed with the Court unless it involves a one-time change.

8. Plaintiff's Motion to Stay Immediate Income Withholding order dated November 8, 1995 is DENIED. This Court. must issue a withholding order in the absence of the parties' agreement or Plaintiff's satisfaction of certain criteria. If Plaintiff has a dispute with the Department of Human Services regarding its enforcement of the order of income withholding, he must address it directly with the Department.

9. Defendant's Application for Action Upon Report of Referee dated November 13, 1995 is GRANTED and the Referee's Report is ratified pursuant to Rule 53 of the Maine Rules of Civil Procedure.

10. Plaintiff and Defendant must have equal and unrestricted access to records to the children's records, including but not limited to medical, dental, and school records, whether or not the

child resides with the parent seeking such records and information.

11. All other motions presented to me at the November 14, 1995 hearing are DENIED except for Defendant's request for a so- called "Spickler Order," which is granted in a separate order of even date.

12. All other motions filed by either party since the November 14, 1995 hearing are DENIED.

13 . DENIED. All motions not otherwise addressed by this Order are

4. Plaintiff shall pay to Defendant's attorney the sum of $6000 as a contribution toward fees incurred in the prosecution and defense of these motions.

5 Feb, 1996

/s#Joseph Field
Joseph H. Field
Judge, Maine District Court